

105TH CONGRESS
2D SESSION

H. R. 4746

To provide for the settlement of the reserved water rights of the Shivwits
and for the construction of certain water projects.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 8, 1998

Mr. HANSEN introduced the following bill; which was referred to the
Committee on Resources

A BILL

To provide for the settlement of the reserved water rights
of the Shivwits and for the construction of certain water
projects.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Shivwits Paiute Indian
5 Band Settlement Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Santa Clara River, a tributary of the
9 Virgin River, flows through the reservation of the
10 Shivwits Paiute Indian Band.

1 (2) The Santa Clara River is subject to erratic
2 flows and in most years does not supply sufficient
3 water to satisfy all existing water rights. The annual
4 flow of the Santa Clara River is characterized by ei-
5 ther low flows or extremely high flood flows, with
6 very few average water years.

7 (3) The Virgin River system is the subject of a
8 Statutory Adjudication of Water Rights pending in
9 the Fifth Judicial Court in and for Washington
10 County, Utah (Civil No. 800507596).

11 (4) The United States has been joined as a
12 party in the Statutory Adjudication of Water Rights
13 and has filed a water users claim asserting a re-
14 served water right claim on behalf of the Shivwits.

15 (5) It is the official policy of the United States,
16 in fulfillment of its trust responsibility to Indian
17 tribes, to promote Indian self-determination and eco-
18 nomic self-sufficiency, and to settle the water rights
19 claims of Indian tribes to avoid lengthy and costly
20 litigation.

21 (6) Any meaningful policy of Indian self-deter-
22 mination and economic self-sufficiency requires the
23 development of viable Indian reservation economies.

24 (7) The quantification of water rights and the
25 development of water use and storage facilities is es-

1 sential to the development of viable Indian reserva-
2 tion economies, particularly in arid western States.

3 (8) Recognizing that final resolution of pending
4 Statutory Adjudication litigation will take many
5 years and entail great expense to all parties, as well
6 as prolong uncertainty as to the availability of water
7 supplies and impair the long-term economic planning
8 and development of all parties, the Shivwits, the
9 State of Utah and local water users have sought to
10 settle disputes over water and reduce the burdens of
11 litigation.

12 (9) After more than 5 years of negotiation
13 (which included participation by representatives of
14 the United States Government), the Shivwits, the
15 Washington County Water Conservancy District, the
16 State of Utah, the City of St. George, the Towns of
17 Ivins and Santa Clara and local water user compa-
18 nies have entered into a Memorandum of Under-
19 standing executed by the Shivwits Band on March
20 26, 1998, to resolve all water rights claims between
21 and among themselves, to quantify the Shivwits' en-
22 titlement to water, and to provide for the construc-
23 tion of water projects to facilitate the settlement of
24 all claims.

1 (10) Pursuant to the Memorandum of Under-
2 standing, the Shivwits Band will receive a total of
3 4,000 acre-feet of water from a combination of the
4 Santa Clara drainage and the Virgin River drainage
5 which will be provided through the construction of
6 the Santa Clara Project and the St. George Water
7 Reuse Project (which are identified in the Memorandum of Understanding).

9 (11) To advance the goals of Federal Indian
10 policy and to fulfill the trust responsibility of the
11 United States to the Shivwits Band, it is appropriate that the United States participate in the implementation of the Settlement Agreement and contribute funds for the construction of such project facilities.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) The term “Secretary” means the Secretary
19 of the Interior.

20 (2) The term “Utah” means the State of Utah.

21 (3) The term “Shivwits” means the Shivwits
22 Paiute Indian Band, a constituent band of the Paiute Indian Tribe of Utah, a federally recognized
23 American Indian Tribe.
24

1 (4) The term “District” means the Washington
2 County Water Conservancy District.

3 (5) The term “St. George” means St. George
4 City.

5 (6) The term “Statutory Adjudication” means
6 the statutory adjudication of water rights pending in
7 Washington County, Civil No. 800507596.

8 (7) The term “MOU” means the Memorandum
9 of Understanding executed by the Shivwits on March
10 26, 1998, to implement construction, operation, and
11 maintenance of the St. George Water Reuse Project
12 and the Santa Clara Project.

13 (8) The term “St. George Water Reuse
14 Project” means the St. George Water Reuse Project
15 described in paragraph (2) of the MOU.

16 (9) The term “Santa Clara Project” means the
17 Santa Clara Project as described in paragraph (1)
18 of the MOU.

19 **SEC. 4. PURPOSES.**

20 The purposes of this Act are to—

21 (1) approve, ratify, and incorporate by ref-
22 erence the Memorandum of Understanding between
23 the Parties, and implement the construction of the
24 St. George Water Reuse Project and the Santa
25 Clara Project as provided for herein; and

1 (2) authorize the actions and appropriations
2 necessary for the United States to fulfill its obliga-
3 tions under this Act.

4 **SEC. 5. ST. GEORGE WATER REUSE PROJECT.**

5 (a) ST. GEORGE WATER REUSE PROJECT.—The St.
6 George Water Reuse Project shall consist of water treat-
7 ment facilities, a pipeline and associated pumping and de-
8 livery facilities which will divert water from the Waste-
9 water Treatment Plant located near St. George, Utah and
10 transport this water for delivery and use in the Santa
11 Clara River Basin by St. George and the Shivwits. The
12 St. George Water Reuse Project shall be sized to deliver
13 2,000 acre-feet annually for use by the Shivwits, which
14 will be in addition to the water delivered to St. George
15 for its use. The Shivwits water shall be delivered by St.
16 George through the St. George Water Reuse Project facili-
17 ties to the eastern boundary of the Shivwits Reservation.

18 (b) PROJECT CONSTRUCTION OPERATION AND MAIN-
19 TENANCE.—St. George shall be responsible for the engi-
20 neering, construction, operation, and maintenance of the
21 St. George Water Reuse Project.

22 (c) PAYMENT OF PROJECT COSTS.—St. George and
23 the Shivwits shall each be responsible for their propor-
24 tionate share of the construction, operation, and mainte-
25 nance costs of the St. George Water Reuse Project based

1 on the respective quantity of water delivered to St. George
2 and the Shivwits.

3 (1) SHARE.—St. George shall fund its propor-
4 tionate share of the construction, operation, and
5 maintenance of the St. George Water Reuse Project.

6 (2) SHIVWITS ASSISTANCE FOR PROJECT.—In
7 furtherance of the settlement of the reserved water
8 right claims of the Shivwits, the Secretary shall
9 make a grant in an amount equal to \$15,000,000 to
10 St. George to cover the Shivwits' portion of the con-
11 struction, operation, and maintenance costs of the
12 St. George Water Reuse Project, on the condition
13 that—

14 (A) the appropriate officials of St. George
15 provide assurances to the Secretary that St.
16 George will carry out the St. George Water
17 Reuse Project and provide the Shivwits with
18 2,000 acre-feet of water annually in a manner
19 consistent with the MOU;

20 (B) parties involved in the Santa Clara
21 Project agree that the Santa Clara Project will
22 be carried out and will provide the Shivwits up
23 to an additional 1,900 acre-feet annually in a
24 manner consistent with the MOU; and

1 (C) the parties involved in the St. George
2 Water Reuse Project and the Santa Clara
3 Project recognize an additional 100 acre-feet
4 annually of groundwater for the Shivwits, as
5 provided for in section 7(c) of this Act.

6 (3) AUTHORIZATION OF APPROPRIATIONS.—

7 There are authorized to be appropriated to the De-
8 partment of the Interior to provide for the grant
9 under paragraph (2), \$15,000,000.

10 (d) ST. GEORGE WATER REUSE PROJECT AGREE-
11 MENT.—The parties, including the Secretary shall imple-
12 ment the MOU and the construction of the St. George
13 Water Reuse Project by the execution of a St. George
14 Water Reuse Project Agreement consistent with the provi-
15 sions of this Act.

16 **SEC. 6. SANTA CLARA PROJECT.**

17 (a) SANTA CLARA PROJECT.—The Santa Clara
18 Project shall consist of a pressurized irrigation pipeline
19 from the existing Gunlock Reservoir to the lower part of
20 the Santa Clara River, along with main lateral pipelines.
21 The Santa Clara Project will result in the pooling of the
22 water rights of the Parties to the MOU, including the
23 Shivwits. The water users shall receive their irrigation
24 water from the Santa Clara Project based on a set delivery
25 schedule. The water supply from the Santa Clara River

1 for irrigation purposes shall be supplemented by ground-
2 water provided by St. George and other water users and
3 from the modified operation of the Gunlock Reservoir. It
4 is projected that in an average or above average year, the
5 Shivwits will receive 1,900 acre-feet of water from the
6 Santa Clara Project. In a below average year, all users,
7 including the Shivwits, shall have a proportionate reduc-
8 tion in the quantity of water delivered.

9 (b) PROJECT FUNDING.—The Utah Legislature and
10 Congress have each appropriated \$750,000 toward the
11 construction of the Santa Clara Project. The District shall
12 provide a grant of \$750,000 for the construction of the
13 Santa Clara Project. The District shall also provide fund-
14 ing for the project in excess of the grants. All beneficiaries
15 of the Santa Clara Project, except the Shivwits, shall pay
16 the District their pro rata share of costs advanced by the
17 District for the construction of the Project in excess of
18 the Federal, State, and District grants.

19 (c) PROJECT CONSTRUCTION, OPERATION, AND
20 MAINTENANCE.—The District shall be responsible for the
21 engineering, construction, operation, and maintenance of
22 the Santa Clara Project. An advisory committee, including
23 all of the parties to the MOU, will assist the District in
24 developing the final plan and budget for the Santa Clara
25 Project, and advise the District on related construction,

1 operation, and maintenance matters. All project bene-
2 ficiaries, including the Shivwits, shall pay their pro rata
3 share of operation and maintenance costs.

4 (d) SANTA CLARA PROJECT AGREEMENT.—The par-
5 ties, including the Secretary, will implement the MOU and
6 the construction of the Santa Clara Project by the execu-
7 tion of a Santa Clara Project Agreement consistent with
8 the provisions of this Act.

9 **SEC. 7. SHIVWITS WATER RIGHTS.**

10 Subject to the provisions of this Act and the imple-
11 mentation of the MOU through the execution of a St.
12 George Water Reuse Project Agreement and a Santa
13 Clara Project Agreement and the construction of these 2
14 projects, the Shivwits' claim to water is hereby settled as
15 follows:

16 (1) The Shivwits will receive a total of 1,900
17 acre-feet annually from the Santa Clara River in an
18 average and above average year, and will have a pro-
19 portionate reduction with other Santa Clara Project
20 water users in a below average year. The 1,900 acre-
21 feet provided for herein shall include the 500.60
22 acre-feet of water under Water Right Nos. 81–2313
23 and 81–2425 specified in the Proposed Determina-
24 tion of Water Rights for the Santa Clara River-Bea-
25 ver Dam Wash Division, Book No. 1 at Pages 199–

1 200. The priority of the 1,900 acre-feet water right
2 provided for herein for the Shivwits shall be the
3 same priority as the other primary water users from
4 the Santa Clara River.

5 (2) The Shivwits will receive 2,000 acre-feet of
6 water annually from the St. George Water Reuse
7 Project. St. George and the Shivwits shall have an
8 equal priority to the water provided from the St.
9 George Water Reuse Project.

10 (3) The Shivwits will also have the right to the
11 groundwater produced from existing wells located on
12 the reservation for 100 acre-feet of water annually.
13 The priority of the Shivwits groundwater right shall
14 be 1916.

15 (4) The Shivwits water right, specified in para-
16 graphs (1), (2), and (3) above, includes all water
17 rights of every nature and description derived from
18 the reserved water right doctrine and State water
19 rights from all sources, both surface and under-
20 ground, and includes all types and kinds of uses
21 whatsoever and encompasses all claims asserted by
22 and through the Shivwits and all persons and enti-
23 ties whose claims or rights are derived from the
24 Shivwits. The Shivwits' water rights provided for
25 herein shall be deemed to have the characteristics of

1 Federal reserved water rights and shall not be sub-
2 ject to loss by abandonment or forfeiture for nonuse.

3 (5) The Shivwits may use the Shivwits Water
4 Right for either or both of the following:

5 (A) For any purpose anywhere on the
6 Shivwits Reservation.

7 (B) Off the Shivwits Reservation within
8 the Virgin River Drainage Basin in Washington
9 County, Utah. The Shivwits or the United
10 States on behalf of the Shivwits shall comply
11 with the provisions of section 73-3-3, Utah
12 Code Annotated with regard to any change in
13 point of diversion, place, or nature of use off
14 the Shivwits Reservation. Any off reservation
15 use of the Shivwits Water Right shall also be
16 in accordance with applicable Federal law.

17 **SEC. 8. INTERLOCUTORY DECREE.**

18 Following the construction of the St. George Water
19 Reuse Project and the Santa Clara Project, the parties,
20 including the Secretary, shall cooperate in obtaining an
21 interlocutory decree in the Statutory Adjudication con-
22 firming the Shivwits' water right as provided for in section
23 7.

1 **SEC. 9. ADDITIONAL PROJECTS.**

2 (a) BEAVER DAM WASH PROJECT.—The Shivwits
3 shall have the right to participate with the District in the
4 development and construction of the Beaver Dam Wash
5 Project. The Shivwits will have the right to receive up to
6 1,000 acre-feet of water annually from the Beaver Dam
7 Wash Project subject to the payment of their propor-
8 tionate share of construction, operation, maintenance, and
9 repair costs.

10 (b) OTHER PROJECTS AND PURCHASES.—Nothing in
11 this Act shall be interpreted or construed to prevent the
12 Shivwits from participating in other water development
13 projects, including the Lake Powell Pipeline Project, or
14 from purchasing additional water rights for their benefit
15 and use.

16 **SEC. 10. ESTABLISHMENT OF TRUST FUND.**

17 (a) ESTABLISHMENT OF TRUST FUND.—There is
18 hereby established in the Treasury a fund to be known
19 as the Shivwits Band Resources Development Trust Fund
20 (in this section referred to as the “Fund”).

21 (b) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated—

23 (1) \$5,000,000 for deposit, in accordance with
24 the following schedule, in the Fund, to be expended
25 by the Band for any water resource development

1 costs, including costs associated with this settle-
2 ment—

3 (A) \$2,000,000 shall be deposited in the
4 first fiscal year which commences following the
5 date of the enactment of this Act;

6 (B) \$2,000,000 during the fiscal year next
7 following the first fiscal year referred to in sub-
8 paragraph (A); and

9 (C) \$1,000,000 during the fiscal year next
10 following the second fiscal year referred to in
11 subparagraph (B); and

12 (2) such amounts as are necessary, for expendi-
13 tures by the Secretary, to pay the Band's share of
14 the construction, operation, maintenance, and re-
15 placement costs for the Gunlock Pipeline Project
16 and the St. George Reuse Project.

17 (c) NO PER CAPITA PAYMENTS.—No part of the
18 principal of the fund, or of the income accruing to such
19 fund, or the revenue from any water use subcontract, shall
20 be distributed to any member of the Band on a per capita
21 basis.

22 **SEC. 11. ENVIRONMENTAL COMPLIANCE.**

23 (a) NATIONAL ENVIRONMENTAL POLICY ACT.—Exe-
24 cution of the St. George Water Reuse Agreement and the
25 construction of the St. George Water Reuse Project shall

1 not constitute a major Federal action under the National
2 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
3 seq.) by reason of the participation of the Shivwits or the
4 Secretary in the St. George Water Reuse Project. The Sec-
5 retary shall comply with all other aspects of the National
6 Environmental Policy Act of 1969, the Endangered Spe-
7 cies Act, and other applicable environmental laws and reg-
8 ulations in fulfilling the terms of the Santa Clara Project
9 and the St. George Water Reuse Project Agreements.

10 (b) ENVIRONMENTAL COMPLIANCE.—There is hereby
11 authorized to be appropriated such sums as may be nec-
12 essary to carry out all necessary environmental compliance
13 associated with this settlement, including mitigation meas-
14 ures adopted by the Secretary. The Secretary shall pay
15 any additional environmental compliance costs associated
16 with the St. George Water Reuse Project and the Santa
17 Clara Project by reason of the Shivwits' involvement in
18 these 2 projects.

19 (c) BUREAU OF LAND MANAGEMENT.—With respect
20 to this settlement, the Bureau of Land Management shall
21 be designated as the lead agency in regard to environ-
22 mental compliance, and shall coordinate and cooperate
23 with the other affected Federal agencies as required under
24 applicable environmental laws.

1 **SEC. 12. MISCELLANEOUS PROVISIONS.**

2 Nothing in the Settlement Agreement or this Act
3 shall be construed in any way to quantify or otherwise ad-
4 versely affect the land and water rights, claims, or entitle-
5 ments to water of any Indian tribe, pueblo, or community,
6 other than the Shivwits Band.

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